

REMARKS

Claim Rejections - 35 USC § 103

Claims 1-7 are rejected under 35 USC § 1039a) as being unpatentable over US 5737499 (Bernstein et al.) in view of US 5153839 (Cross). The rejection is respectfully traversed for the reasons presented below.

As acknowledged in the Office Action, Bernstein et al. fails to describe an optimized automatic program sequence according to which identically operating processing stations are defined as backup stations and are correspondingly utilized if a required processing station is occupied, as required by claim 1, and Bernstein et al. fails to describe the limitations of claims 2 and 3.

In the Office Action, Cross is relied upon to supply that which is not described in Bernstein et al. However, it is respectfully contended that Cross is deficient as a secondary reference because:

1. Cross suggests rerouting processing to backup stations in the event of a station failure, but does not suggest rerouting processing to backup stations when a station is occupied. See column 4, lines 9-18; column 26, lines 12.
2. There is no mention of a priority list of backup stations in Cross, much less one that is definable by the user.
3. No motivation is shown for combining Cross, which relates to the non-analogous art of wire harness manufacturing, with Bernstein et al. The problem Bernstein addresses is handling a station failure in a manufacturing process. The present invention concerns a method for treating cytological or histological specimens in an automatic stainer, wherein backup processing stations are defined in the event that a station is already occupied so that parallel processing of specimen batches can continue (failure of a station is not involved in the claimed method).

In view of the foregoing, applicant respectfully requests favorable reconsideration of claims 1-7.

Allowable Subject Matter

The indication that claims 8 and 9 are directed to allowable subject matter is acknowledged with thanks. Claim 8 has been rewritten in independent form to include all limitations of base claim 1 and intervening claims 2 and 5. Formal allowance of claims 8 and 9 is respectfully requested.

Appl. No. 10/004,092
Response to Office Action
Reply to Office Action of June 3, 2004

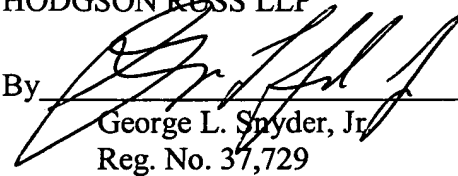
Conclusion

The present application is now thought to be in a condition for allowance. If the Examiner has any questions, or the attorneys for applicant can assist in any way, the undersigned attorney may be contacted at the number provided below.

Respectfully submitted,

HODGSON RUSS LLP

By



George L. Snyder, Jr.
Reg. No. 37,729

GLS/

Enclosures: Petition for One-Month Extension of Time
Fee Transmittal
Check in the amount of \$110.00

One M&T Plaza, Suite 2000
Buffalo, New York 14203-2391
(716) 856-4000
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